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121 671 681 114 one that may be established between the moral imperative to respect the life of another and the rule of the penal code forbidding homicide. The content of the two commandments is the same, but their nature is different. This is exactly what Malinowski said when he stated that legality is more an aspect of tribal life than an independent arrangement.

Finally, if Josselin de Jong had sought to discover the real sanction associated with non-evolved laws, he would have avoided these slippery trails and would have entered the path leading to the definition of customary law.

121 671 208 We should now like to consider another theory which, like that of Van Vollenhoven, also addresses itself to public opinion. It is Hoebel's theory in The Law of Primitive Man /cited in English/. According to it, in case of a claim for damages or the restitution of stolen goods, or even punishment of the perpetrator of an illicit act, if the person responsible admits his responsibility and if public opinion expresses itself in favor of the plaintiff, this public opinion then represents a tribunal and the whole process takes on a legal character (p. 25). Hoebel adds: "Primitive law is characterized by the fact that the plaintiff, in demanding his right, seeks to satisfy both his own interest and the interest of society in general. Furthermore, primitive law shows a certain regularity" (p. 28). /English quotation not found on designated page/.

121 114 671 208 Hoebel here draws quite close to the problem but /232/ does not get to the heart of it. He individualizes laws and obligations, is aware of the role of the group in the resolution of states of conflict, but he does not tell us by what process "public opinion " is enforced. Therein lies the weakness of his theory. As we have shown elsewhere, sanction and disguised coercion differentiate absolutely between public opinion and what we have called the "sentence arising from a group." Public opinion expresses an attitude of the group with regard to a dispute. When this opinion is dominated by the idea of justice and when it is armed with means of sanction and coercion, even if it is not apparent, it represents a true sentence.

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121 671 681 above all the mechanism of social control (p. 208). But morality and religion can play this role only partially, as Radcliffe-Brown himself recognized albeit indirectly because, on the one hand, morality is not imposed by force without a change in their nature, and, on the other hand, punishible acts are not all related to religion. Finally, social [626] control is a very general function which involves several others and is therefore incapable of explaining this specific phenomenon.

Likewise, Radcliffe-Brown proposes that when sanctions are taken by individuals or groups against individuals and groups (vengeance, duel, blood revenge, etc.), under the control and with the approval of society, diffuse sanctions "of public opinion" /cited in English/ are involved. [114] This conclusion does not take us unawares. Since our author denies the legal character of the terrible sanctions enumerated above, applied collectively and according to a procedure determined in advance, it is natural that he should deny this character to these additional, more individualized sanctions.

[208] [626] We have shown, moreover, that public opinion is not able to impose sanctions exceeding disapproval.

121 671 The question therefore remains open. We believe that the perspective offered by our own position makes it possible to avoid the confusion of law with other social regulations and to avoid the paradoxical idea that societies can live without law when they do not have a specific judicial apparatus.

Marcel Mauss, for his part (chapter VII of his Manual), says: "In societies that ethnography singles out all legal phenomena are moral phenomena, without exception; which does not mean that all moral phenomena are necessarily legal in the strict sense" (p. 110). It remains to be seen how one can distinguish law from morality. /234/ "Legal phenomena," says Mauss, "are organized moral phenomena (p. 111)...We know the presence of morality and religion only from the presence of infraction and the idea of sanction. There is moral obligation...when there is diffuse sanction;